

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 06-6383-DOC

Date: January 23, 2013

Title: UNITED STATES OF AMERICA V. MARIANO MARTINEZ

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Julie Barrera
Courtroom Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

**PROCEEDING (IN CHAMBERS): ORDER TO SHOW CAUSE WHY THIS
CASE SHOULD NOT BE DISMISSED**

The facts of this case, from the underlying conviction of Petitioner Mariano Martinez, to the filing of the present petition to vacate or set aside his sentence, to the Court's subsequent appointment of counsel and the filing of an amended petition, are well-known to the parties and are summarized in previous orders of this Court. *See, e.g.*, August 24, 2012, Minute Order (Dkt. 43). Relevant to the present Minute Order are the deadlines set by this Court in its August 24, 2012, Minute Order:

- 1) Petitioner was to file an Amended Petition on or before September 10, 2012;
- 2) Respondent United States was to file a Motion to Dismiss Pursuant to the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") on or before October 9, 2012;
- 3) Petitioner was to file an Opposition on or before October 23, 2012;
- 4) Respondent was to file a Reply on or before October 30, 2012.

On September 10, 2012, Petitioner filed an Amended Petition (Dkt. 44). On October 9, 2012, Respondent United States filed a Motion to Dismiss based on the argument that Petitioner's initial petition had been filed outside of the time limits set by AEDPA, and thus his entire amended petition should be dismissed. *See* Mot. to Dismiss (Dkt. 45) (noting that Petitioner's own filings state that he filed his initial petition on October 6, 2012, three days after the AEDPA deadline). To date, Petitioner has failed to file an Opposition.

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Petitioner's Opposition was due on October 23, 2012. A full week later, on October 29, 2012, Petitioner's counsel filed a document with this Court requesting an "extension time of 30-days [sic]" until November 29, 2012,¹ because she was awaiting subpoenaed prison mail logs that might show that Petitioner's original petition was timely filed pursuant to the mailbox rule. *See Ex Parte Application for Enlargement of Time* (Dkt. 46). Based on counsel's failure to follow up with facts or any proposed Opposition related to the subpoenaed mail logs, this Court assumes that such records either don't exist, or they support the Government's timeline and indicate that Petitioner failed to file his initial petition before the AEDPA filing deadline.

Accordingly, the Court is prepared to issue an order granting the Government's Motion to Dismiss Pursuant to AEDPA. However, out of an abundance of caution, Petitioner's counsel will have additional time to submit any as-yet-unfiled Opposition addressing the issue of petitioner's initial filing date and including information related to the subpoenaed mail logs. **In response to this ORDER TO SHOW CAUSE, Petitioner is ORDERED to file his Opposition on or before February 4, 2013.** There will be no additional extensions, and a failure to file Opposition will result in this Court granting the Government's motion and dismissing Petitioner's petition with prejudice.

The Clerk shall serve a copy of this minute order on counsel for all parties in this action.

MINUTES FORM 11
CIVIL-GEN

Initials of Deputy Clerk: jcb

¹ Petitioner's counsel incorrectly states that "Petitioner's opposition is due on or before October 29, 2012," Bassis Decl. (Dkt. 46) ¶ 2, even though the Court's August 24, 2012, Minute Order sets October 23, 2012, as the deadline for Petitioner's Opposition. *See* August 24, 2012, Minute Order (Dkt. 43) at 4; *see also* Minutes of August 20, 2012, Motion Hearing (Dkt. 42) ("Petitioner shall file an Opposition on or before October 23, 2012."). It is also worth noting that Ms. Bassis's declaration states that Petitioner filed his initial petition on "October 13, 2006," Bassis Decl. ¶ 2, as opposed to the previously-stated October 6, 2006—the Court assumes that this is a typo, as an October 13, 2006, filing has never been suggested by either party, and it would have been fully 10 days after the AEDPA deadline.